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U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

6-09-CV-2162-ORL-31GJK

Bernt Walther von Grabe,
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Orlando, FL 32803
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Tel. 407-610-6325

Plaintiff

v.

U. S. DEPARTMENT
OF HOMELAND SECURITY
Immigration and Customs Enforcement
by its Chief Counsel Nicole G. Guzman,
80 N. Hughey Avenue, Suite 310
Orlando, FL 32801
Tel. 407-236-9932

and

SOCIAL SECURITY ADMINISTRATION
5520 Gatlin Avenue
Orlando, FL 32822
Tel. 407-648-6673

Defendants

CIVIL ACTION:

JUDGE:

VERIFIED COMPLAINT

UNDER 42 U.S.C. § 1983, 1986
FOR VIOLATION OF CIVIL RIGHTS

INCLUDING

- VIOLATION OF THE FREEDOM OF INFORMATION ACT, 5 U.S.C. § 552,
- THE PRIVACY ACT OF 1974 AS AMENDED, 5 U.S.C. 552 (a),
- VIOLATION OF THE SOCIAL SECURITY AGREEMENT BETWEEN THE UNITED STATES AND THE FEDERAL REPUBLIC OF GERMANY, AND
- THE TREATY OF FRIENDSHIP, COMMERCE, AND NAVIGATION BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE UNITED STATES

SCANNED

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PRELIMINARY STATEMENTS

JURISDICTION

This Court has jurisdiction pursuant to 42 U.S.C. 1983, 1986

Each party listed has an office or residence in Orlando, Florida. The names of the actors are not known but are believed to be employees of the defendants and in any case acted under color of office.

CAUSE OF ACTION

Plaintiff alleges that his civil rights were violated.

SUMMARY

Defendant Department of Homeland Security, hereinafter referred to as **DHS**, for years refused to provide Plaintiff and Plaintiff's daughter, Vanessa Nicole Kline, Esq., the Petitioner of an I-130 Petition (**Exhibit 01**), with a duplicate or copy of an approval notice sent to Plaintiff's daughter, the original of which had never reached her (**Exhibits 02/03**). DHS employees thereby violated the Freedom of Information Act as well as the Privacy Act of 1974 for years, in part by knowingly falsely claiming that there was no file.

It was not until Chief Counsel Martin D. Soblick of Immigration and Customs Enforcement in San Diego sua sponte investigated that he found that the file, contrary to DHS' statements, was not lost but was in Record Storage (**Exhibit 10**).

Notwithstanding, DHS employees continued steadfastly to refuse to supply Plaintiff and his daughter Nicole with the requested copy, continuing to claim that there is no file, or ignore Requests under FOIA and the Privacy Act of 1974 entirely.

Their refusal to act included an appeal filed with the Secretary of the DHS (**Exhibit 17**).

In turn, the Social Security Administration, hereinafter referred to as **SSA**, refuses to grant Plaintiff retirement benefits (1) by falsely claiming that Plaintiff had not proved that he is legally in the United States, (2) by falsely claiming that he did not have sufficient credits, (3) by refusing to accept certified, official German Government documents, all of which show Plaintiff's age, and (4) overruling an Immigration Judge's order, who granted Plaintiff a work permit, by refusing to accept the document stamped by the judge, (5) by refusing to initiate contacts to the German Social Security Department for the purpose to combine credits under the U.S.-German Security Agreement, and (6) by refusing to process Plaintiff's appeal.

As a result, the disabled Plaintiff – who has sufficient credits and is entitled to benefits under U.S. Social Security laws and the U.S. International Social Security Agreement – has to rely on his family for support.

Both cases are intertwined as the action of the DHS relate to those of the SSA and vice versa.

A. FACTS UNDERLYING THE COMPLAINT AGAINST DEFENDANT DHS

1. Plaintiff is a permanent resident German national.
2. He immigrated into the United States in 1971 and married Kathleen Kahler, a U.S. citizen in Philadelphia, PA, with whom he had 5 (five) U.S. born children. He returned in 1986 to Europe to raise funds for medical research.
3. After he discovered a method to regenerate a partial liver resect in vitro (¹), to fund clinical trials, in 1992 Plaintiff sold his profitable German publishing company (**Exhibit 04**) – unknown to Plaintiff – to what turned out to be a New York crime family (²) which not only never paid the agreed upon \$2 million to Plaintiff but enticed Plaintiff to advance another \$120,000 in interim operating costs against promise of reimbursement, but only reimbursed \$50,000.
4. Plaintiff filed suit but got nowhere litigating from Europe.
5. Therefore, Plaintiff returned to the United States in late 1994 to prosecute the fraud committed against him.
6. In early 1995 Plaintiff filed a petition to extend his visa-based stay in order to prosecute the court case. INS denied his petition.
7. Plaintiff timely filed an appeal (**Exhibit 05**) and the Board of Immigration Appeals approved the extension. The decision of the Board of Immigration Appeals is on file with Defendant DHS.
8. On August 27, 1995, Plaintiff's U.S. born daughter Nicole Kline-von Grabe filed a Petition for Change of Status for Plaintiff, also known as Form I-130.
9. The Petition was approved on October 10, 1995 (**Exhibit 02**). Yet, the approval letter never reached the petitioner because she got married, moved to California to attend UCLA's

¹ 30,000 patients are diagnosed with fulminant liver failure every year in the U.S. alone, only 3,000 find a donor. In 2000, Plaintiff discovered improved pharmaceutical formulations for the treatment of early Alzheimer, filed for patents, but eventually placed the inventions into the public domain.

² Unknown to Plaintiff, the buyer was the defendant in a lawsuit CBS v. Ziff, 553 N.E.2d 997, in which the Court of Appeals found it had defrauded CBS of \$6 million.

law school, and a letter sent to DHS advising the Defendant of the address change was either ignored or not received.

10. Not having heard from Immigration, in 1968 petitioner Nicole Kline inquired about the I-130 status, again providing her new address on the letter head. On September 21, 1996 Defendant DHS nevertheless sent a duplicate to petitioner's old address (**Exhibit 03**).

11. Subsequently, petitioner Nicole Kline repeatedly inquired for years about the status, only to be told by defendant DHS over and again that there was no file.

12. In 1995 Plaintiff, too, had moved to California to be closer to his U.S. born son Brandon, who served in the United States Marine Corps.

13. While living in California he had a meeting with the Immigration Department in San Diego where he was told that everything was in order.

14. After his son was honorably discharged from the Marine Corps, both Plaintiff and his son returned to Florida.

15. Since Defendant DHS' employees continued to refuse to provide the letter approving the I-130 petition despite several attempts by his daughter to obtain a duplicate, claiming there was no file, Plaintiff began to investigate on his own.

16. It was then that he accessed Defendant DHS' website and found that according to the Government data base the I-130 petition had been approved on October 10, 1995 and a file in fact existed (**Exhibit 02**).

17. And it was then that he found that in response to his daughter's 1968 inquiry, showing her new address, on September 21, 1968 a duplicate of the approval letter was sent – but again to the OLD address (**Exhibit 03**).

18. Defendant DHS was informed of Plaintiff's address change timely (**Exhibit 06**).

19. On May 10, 2007 Plaintiff had an appointment with the DHS office in Jacksonville (**Exhibit 07**) where he was told that the I-130 petition had been approved but that a second step was needed.

20. Therefore Plaintiff's daughter filed an I-824 petition, and wrote follow-up letters on May 15, 2007 (including a \$20 fee) (**Exhibit 08**), on May 26, 2007 (**Exhibit 09-1**) and on June 20, 2007 (again including a \$20 fee) (**Exhibit 09-2**), in which she requested a duplicate of the I-130 approval letter.

21. Her \$20 checks were returned and she was again informed that there was no file.
22. Therefore, on or about June 16, 2009 Plaintiff sent a letter to the INS office in San Diego inquiring whether the file, claimed by Defendant DHS not to exist, had been requested by ICE San Diego and not returned.
23. On June 18, 2009, Chief Counsel Martin Soblic of the ICE office in San Diego called Plaintiff and – due to Plaintiff’s absence – left a message on Plaintiff’s answer machine in which he stated that he had investigated the case on his own and found (1) that the file was not lost, but that (2) it was in record storage, and (3) that Plaintiff had to file a request with the local DHS office to reactivate the file (**Exhibit 10** Transcript).
24. On June 18, 2009 Plaintiff requested reactivation of his file as instructed (**Exhibit 11**), followed by as yet another FOIA Request mailed on June 22, 2009 (**Exhibit 12**).
25. On July 15, 2009 Plaintiff had an appointment with the DHS office in Orlando, was promised that he would hear about his FOIA request, but heard nothing.
26. On August 5, 2009 DHS advised Plaintiff that he was not entitled to obtain a copy of his records, i.e. of the I-130 form approval (**Exhibit 13**).
27. On August 8, 2009 Plaintiff’s daughter filed a request to reactivate the file, this time under the Privacy Act of 1974 (**Exhibit 20**), which again was not answered by Defendant DHS’ personnel.
28. Therefore on September 11, 2009 Plaintiff served a Notice of Intent to file Lawsuit upon DHS Jacksonville (**Exhibit 14**).
29. In response, on September 17, 2009 DHS Jacksonville confirmed that the I-130 petition was approved but that Plaintiff’s daughter would have to file form I-824 (**Exhibit 15**).
30. However, in the same letter, DHS advised Plaintiff that the I-824 form would only be accepted if his daughter attached the I-130 approval letter.
31. Plaintiff’s and his daughter’s FOIA requests either having been denied or ignored, on September 21, 2009 Plaintiff filed an appeal with the Secretary of the Department of Homeland Security (**Exhibit 17**). Following DHS’ usual pattern, the appeal was ignored.
32. Plaintiff’s attempt to obtain the help of then Senator Mel Martinez’ also proved fruitless, the DHS did not cooperate with the Senator. The Senator meanwhile retired.

LEGAL ARGUMENT UNDERLYING THE CASE AGAINST DEFENDANT DHS

33. Plaintiff's and Plaintiff's daughter's requests for a duplicate of the I-130 approval letter dated October 10, 1995 were based upon the Freedom of Information Act, 5 U.S.C. 552 (2)(A),(3)(A), as well as on 5 U.S.C. 552(a)(d)(1), the Privacy Act of 1974 as amended.

34. Under FOIA as well as under the Privacy Act of 1974, Plaintiff and his daughter **have an absolute right to obtain copies of the documents requested. That is the law.**

35. The refusal to provide Plaintiff for many years with copies of the requested documents was willful, is inexcusable, and has caused severe financial, emotional damage, pain and suffering and has caused physical illness to Plaintiff (**Exhibits 18/19**). DHS' violations include violations of 42 U.S.C. 1983/1986. **They are furthermore a cause for Defendant SSA's refusal to grant Plaintiff retirement benefits.**

B. FACTS UNDERLYING THE COMPLAINT AGAINST DEFENDANT SSA

(a) INTRODUCTION

36. The cases against Defendants DHS and SSA are intertwined.

37. Plaintiff is entitled to Social Security Retirement benefits and applied accordingly, but SSA refuses to approve payments claiming that Plaintiff has not shown that he is legally in the United States.

38. Plaintiff is also entitled to Retirement benefits under the U.S./German Social Security Agreement but the Social Security Administration refuses to act upon submission of Form SSA-2490 and initiate German payments.

39. According to communication by the Internal Revenue Service, Plaintiff has sufficient credits to be entitled to retirement benefits but the Social Security Administration refuses to cooperate and denies the existence of sufficient credits (**Exhibit 21**).

40. Plaintiff has submitted proof of his age by presenting official certified German government documents, but the Social Security Administration refuses to recognize certified German government and continues to ask for proof of age (**Exhibits 29/30**) in violation of **Article 12(2)** of the U.S.-German Social Security Agreement (**Exhibit 38**).

(b) FACTS

41. Plaintiff entered the United States in 1971 on a business visa, and over the following two years bought three companies and formed three of his own (see Art. II, Treaty of Friendship, Commerce and Navigation (**Exhibit 37**)(³).

42. To the extent that he earned income, his taxes and social security taxes were promptly paid.

43. When he began to get personally involved in operating his companies, an Immigration Judge in Philadelphia issued a work permit (**Exhibit 22**) thereby establishing Plaintiff's right to work in the United States.

44. Plaintiff left the United States in 1986 to raise funds for medical research, discovered a method to regenerate partial liver resects in vitro, and sold his publishing company to pay for clinical trials.

45. Since the buyer did not pay, Plaintiff commenced litigation and for that purpose returned to the United States.

46. Since the litigation dragged on, he petitioned for an extension of his stay, which was denied by the INS but approved on appeal (**Exhibit 05**).

47. On August 27, 1995 Plaintiff's daughter filed an I-130 petition that was approved on October 10, 1995 (**Exhibits 1/15**).

48. Over time having become disabled by virtue of a blockage of the vascular system of his heart (**Exhibits 18/19**) and having reached retirement age, Plaintiff on June 1, 2009 filed for retirement benefits (**Exhibit 23**) starting in January 2009.

49. Unable to provide a birth certificate because his country of birth Latvia had been overrun twice by German and Russian military forces, destroying vital records, Plaintiff followed published instructions of the Social Security Administration and provided the oldest documents showing his age, namely (1) a certified copy of his German naturalization order (**Exhibit 24**), showing Plaintiff's age, (2) German passports (**Exhibits 25/26**), (3) the official

³ The Social Security Administration recognizes official documents issued by the United States for the benefit of U.S. citizen but refuses the same benefit German citizen in violation of Art.III of the Treaty of Friendship, Commerce and Navigation between the U.S. and Germany and Art. 12 (2) of the U.S. -Germany Social Security Agreement.

German Citizenship Certificate (**Exhibit 27**), (4) the official German Criminal Record Certificate, confirming that he had no criminal record (**Exhibit 28**), each showing Plaintiff's age.

50. To repeat this: beginning with **Exhibit 24**, the certified naturalization order, dated 1942, each of the documents submitted shows Plaintiff's date of birth (⁴)(⁵). The aforementioned records were submitted multiple times (**Exhibit 35/36**).

51. From the submitted originals, it is beyond any reasonable doubt that Plaintiff – now being 78 years of age – has reached the retirement age.

52. Notwithstanding the foregoing, Defendant SSA continued to demand proof of age (**Exhibits 29/30**).

53. Next, employees of Defendant Social Security Administration claimed that Plaintiff did not have sufficient credits to be entitled to retirement benefits, a claim contradicted by information received from the Internal Revenue Service (**Exhibit 16**), and not supported by Plaintiff's records, including USPS tracking/delivery receipts for the submission of money orders (paid by Plaintiff's bank), to cover Social Security taxes due.

54. Plaintiff will extract during discovery records that show that his bank paid the money orders and that he indeed has the 40 credits required.

55. Finally, Plaintiff requested form SSA 2490, required to have the Social Security Administration contact the German Social Security authorities and combine the credits obtained in Germany with those earned in the United States. The Social Security office in Port Orange, Florida, claimed it did not have a form.

56. Eventually Plaintiff managed to get the form and filed it with the Social Security Administration office in Orlando (**Exhibit 31**).

57. Notwithstanding the Social Security Administration refused to activate the proceedings described in the U.S.-German Social Security Agreement, aka Totalization Agreement.

⁴ The birthdates here are blacked out to protect Plaintiff's identity but will be revealed on presentation of the originals during hearing or trial.

⁵ The mere idea – apparently entertained by the Social Security Administration - that a German official in 1942 would have forged the birth date so as to enable Plaintiff to collect retirement benefits at an earlier age is preposterous.

58. Article 4(1) of the U.S.-German Social Security Agreement requires EQUAL TREATMENT OF NATIONALS LIVING IN THE TERRITORY OF THE OTHER.

59. Under the Totalization Agreement with Germany, effective December 1, 1979 (SSA Publication #05-10715) Plaintiff's credits earned in Germany have to be combined with the credits earned in the United States. **That is the law.**

60. Notwithstanding, the Social Security Administration ignores the provisions of the U.S.-German Social Security Agreement and denied Plaintiff's application for lack of sufficient credits (**Exhibit 21**).

61. Plaintiff filed timely an appeal (**Exhibit 32/33/34**) but Defendant Social Security Administration has refused to act upon it.

LEGAL ARGUMENT UNDERLYING THE CASE AGAINST DEFENDANT SSA

62. Defendant Social Security Administration's refusal to follow well established procedures, including the recognition of official, certified government documents **violates Article 12(2) of the U.S.-German Social Security Agreement** (**Exhibit 38**). The refusal to initiate proceedings under the U.S.- Germany Social Security Agreement, and the refusal to even consider Plaintiff's appeal is a **denial of civil rights in violation of 42 U.S.C. 1983**.

63. The refusal of supervising personnel to interfere and correct these violations constitute a violation of 42 U.S.C. 1986.

C. DEMAND FOR JUDGMENT AGAINST DEFENDANT DHS

Comes now the Plaintiff and asks this Court for a judgment against defendant **DHS** as follows:

- I. It is ordered that Defendant Department of Homeland Security provides a duplicate of its I-130 approval letter dated October, 10, 1995 and allows access to Plaintiff's entire file within 2 weeks from the date of this order.
- II. If Defendant DHS does not and or cannot provide a duplicate of the original approval letter, it is ordered that Defendant DHS accepts its letter, dated

September 17, 2009 (Exhibit 15) as substitute and does not require resubmission of as yet another I-130 application before it acts on an I-824 petition to be filed by Plaintiff's daughter.

- III. This Court finds that The Board of Immigration Appeal issued an order extending Plaintiff's stay, that an I-130 form was filed and approved, and that Plaintiff worked under work permit issued by a Philadelphia Immigration Judge, wherefore this Court determines that Plaintiff was and is legally in the United States.

D. DEMAND FOR JUDGMENT AGAINST DEFENDANT SSA

Plaintiff furthermore asks this Court for a judgment against defendant SSA as follows:

- IV. It is ordered that Defendant Social Security Administration accepts Philadelphia Immigration Court's work permit (Exhibit 22) and The DHS approval letter, dated September 19, 2009, (Exhibit 15) as proof of Plaintiff's legal presence in the United States.
- V. It is furthermore ordered that Defendant Social Security Administration accepts the certified copy of Germany's Naturalization Order (Exhibit 24) and other original German documents, showing the age of Plaintiff, as proof of age.
- VI. It is furthermore ordered that Defendant Social Security Administration commences all proceedings required under the U.S.-German Social Security Agreement with Germany, in particular commences contacts to Germany's Social Security Administration for a combination of credits earned by Plaintiff in both countries.
- VII. It is furthermore ordered that Defendant SSA provides an accounting of credits earned by Plaintiff in the United States.
- VIII. It is furthermore ordered that Defendant Social Security Administration approves Plaintiff's Retirement Benefits Application retroactive to and

including January 2009 if he has at a minimum earned the required 40 credits, to be updated on receipt of German credits, if any.

Plaintiff finally moves for an order against Defendants DHS and SSA for reimbursement of Plaintiff's cost of litigation, including filing fee, process server costs, and reasonable attorneys cost and fees and reserves the right to plead for additional damages.

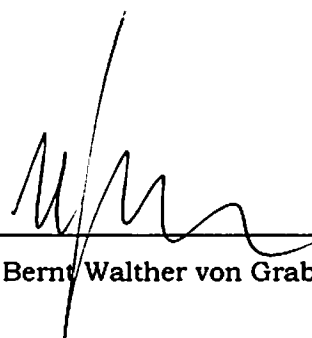
VERIFICATION

I, Bernt Walther von Grabe, the undersigned Plaintiff, hereby states under penalty of perjury that the facts contained in the Complaint herein are true and correct where they are based upon Plaintiff's own knowledge and are believed to be true where they are based upon information received from government agencies.

STATEMENT OF COMPLIANCE

I, Bernt von Grabe, the Plaintiff, hereby attest that the foregoing Complaint complies with the filing requirement of the Court, in particular that the font used is Times Roman 12 points.

This 27th day of December 2009



Bernt Walther von Grabe, Plaintiff

cc:

1. Bundesjustizministerin Sabine Leutheusser-Schnarrenberger,
Bundesministerium der Justiz, Mohrenstraße 37, D-10117 Berlin, Germany
2. Catherine Ashton, Commissioner, Vice President External Relations
European Commission, Rue Archimède, 73, 1000 – Bruxelles, Belgium
3. Consulate of the Federal Republic of Germany, Atlanta, Georgia
4. Nah Deh Simmons, Esq., Jacksonville, FL
5. Vanessa Nicole Kline, Esq., Orlando, FL